DEVELOPMENT AGREEMENT
(Midtown Commons Project)

This DEVELOPMENT AGREEMENT (this "Agreement") is dated _____, by and between MIRAMONTE COMPANIES, LLC, a Montana limited liability company ("**Developer**") the CITY OF MISSOULA, MONTANA, a municipal corporation of the State of Montana ("**City**"), and the MISSOULA REDEVELOPMENT AGENCY, a component unit of the City ("**MRA**"). Developer, City and MRA are each individually referred to herein as a "**Party**" and collectively as the "**Parties**."

RECITALS:

WHEREAS, under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "**Act**"), the City is authorized to create urban renewal areas, prepare and adopt an urban renewal plan therefor and amendments thereto, undertake urban renewal projects therein, provide for the segregation and collection of tax increment with respect to property taxes collected in such areas, issue its bonds to pay the costs of such projects and pledge to the repayment of the bonds all or a portion of the tax increment and other revenues derived from projects undertaken within the urban renewal area; and

WHEREAS, pursuant to the Act and Ordinance No. 3163, adopted by the Council on December 11, 2000, as amended by Ordinance No. 3557, adopted by the Council on November 9, 2015, the City has created the City of Missoula Urban Renewal District III as an urban renewal area ("**District**") and has approved the City of Missoula URD III Urban Renewal Plan ("**Plan**") as an urban renewal plan. The Plan provides for the segregation and collection of tax increment revenues with respect to the District in accordance with the provisions of the Act; and

WHEREAS, City previously acquired approximately thirteen (13) acres of property located south and west of 3015 Paxson Street ("**Property**") to be redeveloped for mixed uses and housing; and

WHEREAS, in June 2025, and amended in December 2025, City and Developer executed an Exclusive Negotiation Agreement relating to a framework for the Parties to conduct due diligence and evaluated a shared redevelopment vision consistent with the Missoula Midtown Master Plan and Developer's proposed concept plan, and City and Developer have engaged in regular meetings and negotiated in good faith; and

WHEREAS, the redevelopment of the Midtown Commons property requires public infrastructure improvements, including a new public park, connections to the Bitterroot Trail, street construction, landscaping in the right-of-way, sidewalks, street lighting, extension of water and sewer mains, installation of storm water treatment, irrigation ditch relocation and improvements, and related improvements consistent with the Midtown Master Plan (collectively, the "**Infrastructure Improvements**"); and

WHEREAS, the "**Midtown Commons Project**" will be made up of for sale and for rent residential structures in a mixture of building types (presently envisioned as townhomes, condos

and multifamily apartments), along with the possibility of adding commercial office spaces, completed in five (5) phases, as shown in the Master Plan and attached as Exhibit A; and

WHEREAS, under the Act, permissible uses of tax increment and tax increment financing include the acquisition, construction and improvement of public improvements or infrastructure; and

WHEREAS, the Parties desire to enter into this Agreement which sets forth the obligations and commitments of the Parties with respect to the Midtown Commons Project and Infrastructure Improvements.

NOW, THEREFORE, City, MRA and Developer, pursuant to the Act, each in consideration of the representations, covenants and agreements of the other, as set forth herein, mutually represent, covenant and agree as follows:

Section 1. Definitions; Rules of Interpretation; Exhibits.

1.1. Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context clearly requires otherwise, the following terms have the meanings given such terms in the Recitals, in the Supplemental Resolution, or as follows:

"Environmental Laws and Regulations" means and includes the Federal Comprehensive Environmental Compensation Response and Liability Act ("CERCLA" or the "Federal Superfund Act") as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. §§ 9601 et seq.; the Federal Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 et seq.; the Clean Water Act, 33 U.S.C. § 1321 et seq.; and the Clean Air Act, 42 U.S.C. §§ 7401 et seq., all as the same may be from time to time amended, and any other federal, state, county, municipal, local or other statute, code, law, ordinance, regulation, requirement or rule which may relate to or deal with human health or the environment including without limitation all land use, zoning, and stormwater control regulations as well as all regulations promulgated by a regulatory body pursuant to any statute, code, law, ordinance, regulation, requirement or rule.

"Indemnified Parties" has the meaning given to it in Section 6.1.

"Land Use Regulations" means all federal, state and local laws, rules, regulations, ordinances and plans relating to or governing the development or use of the Land or the Midtown Commons Project.

"Prevailing Wage Rates" means the Montana Prevailing Wage Rate for public works projects as published from time to time by and available from the Montana Department of Labor and Industry, Employment Standards Division, P.O. Box 8011, Helena, Montana 59604, telephone number (406) 444-3904.

"Midtown Commons Project" has the meaning given in the recitals hereto.

"State" means the State of Montana.

"Unavoidable Delay" means a delay resulting from a cause over which the Party required to perform does not have control and which cannot or could not have been avoided by the exercise of reasonable care, including but not limited to, acts of God, accidents, war, civil unrest, embargoes, strikes, unavailability of raw materials or manufactured goods, litigation, pandemics, epidemics, labor shortages, unusually inclement weather and the delays of the other Party or its contractors, agents or employees in the performance of their duties under or incident to this Agreement.

1.2. Rules of Interpretation.

(a) The words "herein," "hereof" and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than to any of its particular sections or subdivisions.

(b) References to any particular section or subdivision hereof are to the section or subdivision of this Agreement in its original signed form, unless otherwise indicated.

(c) The word "or" is not exclusive but is intended to contemplate or encompass one, more or all of the alternatives conjoined.

1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Agreement:

Exhibit A: Midtown Commons Master Plan

Exhibit B: Property Description

Exhibit C: Park Master Plan

Exhibit D: Right-of-Way to be Vacated/Dedicated and Proposed Parcel Map

Exhibit E: Public Infrastructure Phasing Plan

Exhibit F: Non-Discrimination and Equal Opportunity Policies

Section 2. Representations.

2.1. City and MRA Representations. The City and MRA hereby represent as follows:

(a) Pursuant to the Act, and after a public hearing duly called and held, the City by the Ordinance has duly created the District.

(b) Pursuant to the Supplemental Resolution, the City has duly authorized the execution and delivery of this Agreement. The Missoula City Council and the MRA Board have approved this Agreement in conformance with applicable legal requirements.

2.2. Developer Representations. Developer hereby represents as follows:

(a) Developer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Montana and with full power and authority to enter into and perform this Agreement in accordance with the terms and conditions hereof.

(b) Developer has full right, power, authority, and ability to execute, deliver, and perform this Agreement and by all necessary corporate action has duly authorized the execution and delivery of this Agreement.

(c) With the MRA Infrastructure funds described below Developer has the financial capability or financing commitments to complete the Infrastructure Improvements and the Midtown Commons Project.

(d) Developer is not aware of any facts the existence of which would cause Developer to be in violation in any material respect of any Environmental Laws and Regulations applicable to the Midtown Commons Project and Infrastructure Improvements. Developer has not received from any local, State or federal official any notice or communication indicating that the activities of Developer have been, may be or will be in violation of any Environmental Laws and Regulations applicable to the Midtown Commons Project or the Infrastructure Improvements.

(e) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof is prohibited or limited by, conflicts with or results in a breach of the terms, conditions or provisions of the certificate of formation, partnership agreement or operating agreement of Developer or any evidence of indebtedness, agreement or instrument of whatever nature to which Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(f) There is no action, suit, investigation or proceeding now pending or, to the knowledge of Developer, threatened against or affecting Developer or its business, operations, properties or condition (financial or otherwise) before or by any governmental department, commission, board, authority or agency, or any court, arbitrator, mediator or grand jury, that could, individually or in the aggregate, materially and adversely affect the ability of Developer to complete the Midtown Commons Project and Infrastructure Improvements.

Section 3. City and MRA Undertakings.

3.1. City to Convey Lands to Developer. City hereby commits that it will convey to Developer lands at Midtown Commons for its original acquisition cost of Seven Million Two Hundred Thousand Dollars ($7,200,000) as described in the Real Property Purchase and Sale Agreements executed by the Parties concurrently with this Agreement.

3.2. MRA to Provide Funding for Infrastructure Improvements. MRA will provide funding for Infrastructure Improvements with an estimated cost of $10.9 million which includes the cost to design and construct the park improvements shown in Exhibit C with an estimated cost of $2.5 million (collectively, the "**City Contribution**"). Payment or reimbursement by MRA (for and on behalf of the City) for the Infrastructure Improvements shall be subject to the following conditions and in accordance with the following procedures:

a. Subject to the satisfaction of the following conditions, Developer shall be entitled to monthly reimbursement payments no more frequently than monthly for the actual invoiced costs of the Infrastructure Improvements so long as a Performance and Payment Bond payable to the City is in effect, a minimum of five percent (5%) retainage has been withheld from payments to the contractor, and Developer is in full compliance with the provisions of this agreement.

b. Any payment or reimbursement by MRA for costs of the Infrastructure Improvements will be based on paid invoices for costs incurred by Developer, its contractors and subcontractors or utility companies. MRA may reject, in its sole discretion, any invoice to the extent it is not part of the Infrastructure Improvements.

c. The Parties agree that MRA will not be required to pay or reimburse costs of the Infrastructure Improvements unless at the time of such request (A) all of Developer's representations as set forth in Section 4 are true and correct and (B) Developer is not in breach of any covenant or undertaking as set forth in Section 4.

d. The request for payment or reimbursement must be accompanied by a signed draw request in a form acceptable to MRA, accompanied by the invoices and lien waivers from the contractors or subcontractors performing the work to be paid or reimbursed.

e. MRA will cause payment or reimbursement for all properly submitted and allowable expenses to be paid within 30 days of satisfaction of the requirements of this Section 3, subject to compliance with MRA's reimbursement request procedures as described in this Section 3.2.

f. Final reimbursement shall be made to Developer upon City's approval and acceptance of the Infrastructure Improvements. Final request for payment or reimbursement shall be accompanied by documentation that the Work has achieved full completion and lien releases or similar documentation from contractors or subcontractors providing evidence that all claims have been paid in full.

3.3 Creation of Parcels for Project Master Plan. The Property is currently made up of several dozen lots within the Carline Addition and the Carline Addition No. 3 subdivisions. In order to effectuate the Master Plan for the Midtown Commons Project, within 60 days following the execution of the Purchase and Sale Agreement for the Property the City will initiate vacation proceedings for the right-of-way to be vacated, as shown on the attached Exhibit D. The proposed vacation will be subject to City Council review and approval and will be contingent upon the Developer preparing a Certificate of Survey to be approved by the City and County for execution and filing, with such Certificate of Survey dedicating new right-of-way, as shown in Exhibit D, and further rearranging lot boundaries to create the parcels shown in the proposed Parcel Map in Exhibit D in compliance with state and local law. The rearrangement of lot boundaries may relocate or aggregate lots as needed by the Developer so long as no new lots are created. If approved by City Council, the vacation resolution and the new Certificate of Survey shall be filed with the County Clerk and Recorder simultaneously.

Section 4. Developer Undertakings.

4.1. Construction of Midtown Commons Project and Infrastructure Improvements. Developer hereby agrees and commits to MRA that, following acquisition of Property, it will diligently undertake and complete the design and construction of the Midtown Commons Project and Infrastructure Improvements consistent with the Midtown Commons Master Plan and as shown in Exhibit A. Developer shall, and shall cause its designers, engineers, and contractors to, act in accordance with all applicable federal, State and local laws, rules, regulations, ordinances and plans relating to or governing the development or use of the Midtown Commons Project and Infrastructure Improvements, including applicable Land Use Regulations and Environmental Laws and Regulations. Subject to timely payment of the cost of the Infrastructure Improvements by MRA and absent Unavoidable Delay, Developer agrees and commits to MRA that construction of the Infrastructure Improvements will be completed by December 31, 2029 unless modified by a mutually agreed upon phasing plan that the Mayor is hereby authorized to execute. Developer anticipates that the construction of the Midtown Commons Project will be completed by December 31, 2033; provided, however, the parties understand and appreciate that market conditions and other factors outside of Developer's control may prevent Developer's completion by such date.

Developer agrees to permit City and MRA and any of its officers, employees or agents access to the Land for the purpose of inspection of all work being performed in connection with the Midtown Commons Project and Infrastructure Improvements; provided, however, that MRA shall have no obligation to inspect such work.

4.2 Completion of Certificate of Survey to Dedicate Right-of-Way and Rearrange Lot Boundaries. Developer agrees to have the work identified in Section 3.3 above completed in a timely fashion in order to comply with the conditions imposed on the right-of-way vacation resolution passed by City Council.

4.3 Developer Participation Payment. Developer acknowledges that City, through MRA, is providing funding for certain public infrastructure improvements benefiting the Project. In recognition of the City Contribution, Developer agrees that City shall have the opportunity to participate in the financial success of the Project through a payment from Developer of Five Million Dollars and No/100 Dollars ($5,000,000.00) (the "**Developer Participation Payment**"), as may be subject to offset as herein described. The parties agree that the Developer Participation Payment will be paid in installments in connection with the consummation of sales to unaffiliated third-party purchaser (each a "**Payment Trigger**") of a residential condominium unit constructed within the Condos contemplated by the Midtown Commons Master Plan (each a "**Unit**"). The Developer Participation Payment shall be allocated and paid equally among all Units. Upon the consummation of the sale of a Unit, the numerator being the Development Participation Payment and the denominator is the total number Units constructed or to be constructed (each a "**Unit Sale Payment**"). By way of example, if a total 200 Units are to be constructed among the two Condos, then the Unit Sale Payment would be $25,000.

The Developer Participation Payment is not a repayment or reimbursement of the City Contribution and is not intended to be a gift or donation, but rather a negotiated participation in the value created by the Project. Except as expressly provided in this Section, nothing herein

shall be construed to create a present debt or fixed repayment obligation prior to the occurrence of a Payment Trigger and the parties' agreement as described above. Notwithstanding the foregoing, in the event that Developer has not received all or a portion of the City Contribution in violation of this Agreement, Developer shall have the right to offset a Unit Sale Payment by any amounts Developer paid for the Infrastructure Improvements that MRA was required to pay in accordance with this Agreement or with respect to a payment required pursuant to a Seller Loan (as defined in the Real Property Purchase and Sale Agreements referenced in Section 3.1 hereof).

4.4. Land for Public Park and Trail Connections. Developer will dedicate to City approximately 1.6 acres of land for a public park (which includes a portion of Harve Street right-of-way) and 0.2 acres for trail connections as shown in the Midtown Commons Master Plan in Exhibit A. The City agrees that this park dedication along with the construction of the park improvements included as part of the Infrastructure Improvements shall satisfy any Activity Area requirements for the Land and Midtown Commons Project pursuant to Missoula Municipal Code Title 22, Section 4.9.02-D.2(b). The City or MRA shall be solely responsible for acquiring any easements from the Montana Rail Link that are necessary for the construction of the trail connections shown in the Midtown Commons Master Plan.

4.5. Condominium Site Development. The parties acknowledge that the Condos identified in the Midtown Commons Master Plan may be constructed in phases but shall be designed under a master site development plan. Accordingly, for purposes of Missoula Municipal Code Title 22, Section 4.9.02-B (General Landscaping), the landscaping requirements set forth therein shall be applied to the parcels constituting the Condos taken as a whole, irrespective of phasing of construction and ownership pursuant to the Phased Construction approach laid out in Missoula Municipal Code Title 22, Section 4.12.02. However, in order to secure performance for subsequent installation or construction required to comply with any required landscaping standards, Developer agrees to enter into a development agreement or similar, prior to issuance of a certificate of occupancy for a unit, to guarantee the completion of the required landscaping items located on the southern condo parcel that are necessary to meet the zoning requirements applicable to the northern condo parcel. Alternatively, the City may grant Developer an easement to complete the required items that are located within the southern condo parcel allowing the Developer to complete the required site landscaping.

4.6. Prevailing Wage Rates. Developer understands that City and MRA are obligated to follow certain laws, including with respect to Prevailing Wage Rates, with respect to the expenditure of public funds, which includes tax increment. Developer agrees that through its contract with its contractor, it will require its general contractor/construction manager to pay the Prevailing Wage Rates on contracts related to Infrastructure Improvements including sewer, water, electric, streets, sidewalks, park, trail connections, and landscaping. Developer will provide to City or MRA all documentation requested to verify the compliance of Developer and its general contractor/construction manager with the foregoing requirement.

4.7. Utilities. Developer shall not interfere with, or construct any improvements over, any public street or utility easement without the prior written approval of the City. All connections to public utility lines and facilities shall be subject to approval of the City and any utility provider involved. Developer at its own expense shall replace any public facilities or

utilities damaged during the Midtown Commons Project by Developer or its agents or by others acting on behalf of or under their direction or control of Developer.

4.8. Irrigation Ditch. Any work within the existing irrigation ditch or on either side of the irrigation ditch will require coordination and likely approval of the ditch company. Developer agrees to work in good faith with the City to obtain irrigation ditch company approval before conducting any construction activities in proximity to the ditch.

4.9. Permits and Compliance With Laws. Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet all requirements of all local, state and federal laws, rules and regulations which must be obtained or met in connection with the acquisition and construction of the Midtown Commons Project. Without limiting the foregoing, Developer will request and seek to obtain from City or other appropriate governmental authority all necessary land use, zoning, and building permits. Developer will comply in all material respects with all Environmental Laws and Regulations applicable to the construction, acquisition, and operation of the Midtown Commons Project, will obtain any and all necessary environmental reviews, licenses or clearances under, and will comply in all material respects with, Environmental Laws and Regulations. In addition, Developer shall comply fully with all applicable State and federal laws, regulations, and municipal ordinances related to worker safety including but not limited to the Occupational Safety and Health Act (OSHA), the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA, all applicable City, County, and State building and electrical codes, and the Americans with Disabilities Act.

4.10. Nondiscrimination. Developer agrees to require its contractor(s) to be in compliance with the City's Non-Discrimination and Equal Opportunity Policies attached hereto as Exhibit D, as well as Montana Code Annotated, Title 49, regarding activities related to the Midtown Commons Project.

4.11. Worker's Compensation Insurance. Developer shall require in its construction contracts related to the Midtown Commons Project with all of its respective contractors that such contractors are to be covered by a Worker's Compensation insurance program with the State, a private insurance carrier, or an approved self-insurance plan in accordance with State law.

Section 5. Construction License. Upon execution of this Agreement, and the related Purchase and Sale Agreement for the Property, the City grants to Developer a revocable construction license to enter the Property to (1) undertake any activity necessary to construct the Infrastructure Improvements; and (2) conduct any necessary site grading or preparation activities for the townhomes to be constructed south of Harve Avenue. Developer agrees to indemnify, defend and hold harmless the City and its officers and employees from any claims or actions brought by third parties arising in any way from the construction activities authorized in this Section, except to the extent caused by the City's negligence. In the event the purchase of the Property does not close for any reason, the Developer shall cease activities under this Section, and the Parties shall have no further obligations to complete construction or restore the site.

Section 6. Covenants to Pay Taxes. So long as Developer is the owner of the Midtown Commons Project, Developer shall pay or cause to be paid when due and prior to the imposition of penalty all Taxes and all installments of any special assessments payable with respect to the

Midtown Commons Project (or the portions thereof that it owns) and any improvements thereto or extension thereof.

Section 7. Indemnification and Insurance.

7.1. Indemnification. Developer agrees to indemnify, defend and hold harmless MRA and all MRA board members, the City, and their officers, agents and employees ("**Indemnified Parties**") against any loss, damage, cost (including reasonable attorneys' fees), claim, demand, suit, action or other proceeding whatsoever (collectively, "**Losses**") arising out of any third-party claim: (i) arising or purportedly arising out of, or resulting or purportedly resulting from, the acquisition and construction of the Midtown Commons Project and Infrastructure Improvements by Developer, or any material violation by Developer of a condition or covenant of this Agreement; or (ii) arising or purportedly arising out of, or resulting from or purportedly resulting from any negligent or more culpable act or omission of the Developer or its officer, agents, contractors, consultants or employees in connection with the performance of its obligations under this Agreement.

7.2. Exceptions and Limitations on Indemnification. Notwithstanding anything to the contrary in this Agreement, Developer is not obligated to indemnify, hold harmless, or defend any of the Indemnified Parties against any claim (whether direct or indirect) if such claim or corresponding Losses arise out of or result from, in whole or in part, an Indemnified Parties' gross negligence or more culpable act or omission (including recklessness or willful misconduct).

7.3. Insurance. Developer shall keep and maintain Midtown Commons Project at all times insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with facilities of the type and size comparable to the Midtown Commons Project, and Developer shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for direct damage insurance covering all risks of loss, including, but not limited to, the following:

1. fire
2. extended coverage perils
3. vandalism and malicious mischief
4. boiler explosion (but only if steam boilers are present)
5. collapse

on a replacement cost basis in an amount equivalent to the Full Insurable Value thereof. "Full Insurable Value" shall include the actual replacement cost of the Midtown Commons Project, exclusive of foundations and footings, without deduction for architectural, engineering, legal or administrative fees or for depreciation. The policies required by this Section 5.3 shall be subject to a no coinsurance clause or contain an agreed amount clause and must contain a deductibility provision not exceeding $100,000.

During construction of the Midtown Commons Project, any and all of the foregoing insurance policies may be maintained by Developer's contractor; provided that once the Midtown Commons Project is placed into service, Developer or successor owners (including,

e.g., owners of various components of the Project and homeowners' association for the Condos) shall maintain all of the foregoing insurance policies for the term of this Agreement.

In addition to and independent of the above, Developer shall at Developer's expense secure liability insurance through an insurance company or companies duly licensed and authorized to conduct insurance business in Montana. The insurance shall not contain any exclusion for liabilities specifically assumed by Developer in this Section. The insurance shall cover and apply to all claims, demands, suits, damages, losses, and expenses that may be asserted or claimed against, recovered from, or suffered by MRA in relation to construction of the Midtown Commons Project and Infrastructure Improvements caused by Developer, except for any claims related to the negligence or willful misconduct of MRA. Developer must furnish to MRA an accompanying certificate of insurance and accompanying endorsements in amounts not less than as follows:

> Commercial General Liability - $1,000,000 per occurrence; $2,000,000 annual aggregate

The above amounts shall be exclusive of defense costs. City, MRA, its officers, agents, and employees, shall be endorsed as an additional or named insured on a primary non-contributory basis on the Commercial General Liability policy. The insurance and required endorsements must be in a form suitable to MRA and shall include no less than a thirty (30) day notice of cancellation or non-renewal. Developer must notify MRA within two (2) business days of Developer's receipt of notice that any required insurance coverage will be terminated or Developer's decision to terminate any required insurance coverage for any reason.

Section 8. General Provisions.

8.1. Conflicts of Interest; MRA's Representatives Not Individually Liable. Developer represents that it does not employ, retain, or contract with an officer or employee of MRA and that no member, officer or employee of MRA has a personal or financial interest, direct or indirect, in this Agreement or in the Midtown Commons Project. No member, officer or employee of MRA shall be personally liable to Developer in the event of any default under or breach of this Agreement by MRA, or for any amount that may become due to Developer for any obligation issued under or arising from the terms of this Agreement.

8.2. Rights Cumulative. The rights and remedies of the Parties of this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any Party hereto of any one or more of such remedies shall not preclude the exercise by such Party, at the same or different times, of any other remedy for the same default or breach or of any of its remedies for any other default or breach of the Party subject to the limitation of remedies provided herein. No waiver made by such Party with respect to the performance or the manner or time thereof, of any obligation under this Agreement, shall be considered a waiver with respect to the particular obligation of the other Party or a condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver of any obligations of the other Party. Delay by a Party hereto instituting or prosecuting any cause of action or claim hereunder shall not be deemed a waiver of any rights hereunder.

8.3. Term of Agreement. This Agreement shall automatically terminate if the PSA is terminated (other than by merger with the deed at closing). Subject to the foregoing, this Agreement shall remain in effect until such time as the Project is completed or by mutual agreement of the Parties once all outstanding promissory notes to the City are repaid. Notwithstanding the foregoing provisions of this Section 8.3, Sections 6.1 and 7.1 of this Agreement shall in all events survive the termination of this Agreement.

8.4. Limitation on City and MRA Liability. No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by MRA contained in any document in connection with the Midtown Commons Project and Infrastructure Improvements shall give rise to any pecuniary liability of MRA or a charge against its general credit or taxing powers, or shall obligate City or MRA financially in any way except with respect to then-available Tax Increment. No failure of City or MRA to comply with any term, condition, covenant or agreement herein shall subject City or MRA to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be paid or recovered from then-available Tax Increment; and no execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of City (except as such constitute then-available Tax Increment). MRA has no taxing powers. Nothing herein shall preclude a proper party in interest from seeking and obtaining specific performance against City or MRA for any failure to comply with any term, condition, covenant or agreement herein; provided that no costs, expenses or other monetary relief shall be recoverable from City or MRA except as may be payable from then-available Tax Increment or as an offset to the Developer Participation Payment . This Agreement shall not constitute or be construed to give rise to a debt of City.

8.5. Assignment. This Agreement is unique among the City, MRA and the Developer and no Party may assign any rights or privileges, or delegate any duties or obligations under this Agreement, without first obtaining the written consent of MRA (on behalf of itself and the City); provided, however, Developer may assign this Agreement, in whole or in part, without the consent of the City or MRA, to (i) any entity controlling, controlled by, or under common control with Developer, or (ii) any entity in which Developer or its principals hold, directly or indirectly, a majority ownership interest (each, a "**Permitted Assignee**"). For purposes hereof, "control" means the direct or indirect power to direct the management and policies of an entity, whether through ownership of voting interests, by contract, or otherwise. Any such assignment shall be effective upon written notice to the City and MRA, and delivery of the assignee's contact information. Any such assignment shall relieve Developer of its obligations, whether in whole or in part, under this Agreement but not the obligations associated with the construction of the Infrastructure Improvements. Developer shall not assign this Agreement to any party other than a Permitted Assignee without the prior written consent of the City and MRA, which may be granted or withheld in the sole and absolute discretion of the City and MRA.

8.6. Successors Bound By Agreement; No Third Party Beneficiary; No Property Interest. Subject to compliance with Section 8.5, this Agreement will inure to the benefit of and be binding upon the Parties to this Agreement and their respective successors in interest and a Permitted Assignee. This Agreement is for the exclusive benefit of the Parties, does not constitute a third-party beneficiary agreement, and may not be relied upon or enforced by a third

party. This Agreement, by itself, does not create or give rise to a property interest in the Land or the Midtown Commons Project and Infrastructure Improvements.

8.7. Amendments, Changes and Modifications. This Agreement may be amended and any of its terms may be modified only by written amendment authorized and signed by the Parties hereto.

8.8. Headings. The headings of articles and sections in this Agreement are inserted for convenience of reference only and do not limit or amplify the terms and provisions of the Agreement in any manner. The headings will be ignored and will not affect the construction of any provisions of this Agreement.

8.9. Notice. Any formal notice, demand or communication required or permitted by the terms of this Agreement to be given to MRA or Developer will be in writing and will be delivered to such Party either: (i) by personal hand-delivery; (ii) by depositing the same in the United States mail, certified mail with return receipt requested; (iii) by depositing the same with a nationally recognized overnight delivery service; or (iv) with respect to notice to Developer, by email (in which case the notice shall be effective as of the date of confirmed delivery). Notice will be deemed complete upon receipt of the notice pursuant to any of the foregoing methods of notice. Notices and communications to the parties must be addressed to and delivered at the following addresses:

If to City:

City of Missoula
435 Ryman St
Missoula, MT 59802
Attention: Chief Administrative Officer

If to MRA:

Missoula Redevelopment Agency
140 West Pine
Missoula, Montana 59802
Attention: Director

If to Developer:

Miramonte Companies, LLC
729 West Central Avenue
Missoula, Montana 59801
E-Mail: chris@kemmerly.com
Attention: Christopher Kemmerly

With a copy to:

Hursh & Saffer, PLLC
6720 East Camino Principal, Suite 101
Tucson, Arizona 85715
E-Mail: jhursh@hurshaffer.com
Attn: Jeff Hursh

MRA and Developer, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications should be sent.

8.10. Severability. If any provision of this Agreement is declared void or held invalid, such provision will be deemed severed from this Agreement and the remaining provisions of this Agreement will otherwise remain in full force and effect.

8.11. Place of Performance. The place of performance of this Agreement will be in the City of Missoula, Missoula County, Montana.

8.12. Governing Law. This agreement and the legal relations between the Parties hereto will be governed by and construed in accordance with the laws of the State of Montana, without giving effect to any choice of law statutes, rules, or principles.

8.13. Further Assurances and Corrective Instruments. The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Midtown Commons Project, the Infrastructure Improvements or for carrying out the expressed intention of this Agreement. City, on behalf of its various agencies and departments, agrees to use reasonable best efforts to promptly review and process all plans and permit applications submitted by Developer in connection with the Project, including, without limitation, plans and permits for the public park, trails and trail connections, and other Infrastructure Improvements. City further agrees to cooperate in good faith with Developer to resolve any comments or deficiencies in a timely manner, with the mutual goal of facilitating the prompt and efficient completion of the Infrastructure Improvements and the timelines set forth herein.

8.14. Execution Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute one and the same instrument. Electronic and emailed signatures shall be valid in all respects and treated as if they were originals.

IN WITNESS WHEREOF, the Parties hereto have caused this Development Agreement to be executed as of the date first set forth above.

MISSOULA REDEVELOPMENT AGENCY

By:_____

Printed Name: _____
Title: Board Chair

By:_____
Printed Name: _____
Title: Director

CITY OF MISSOULA, MONTANA

By:_____
Printed Name: Andrea Davis
Title: Mayor

ATTEST:

By:_____
Printed Name: Claire Trimble, CMC
Title: City Clerk

[Signature Page to Development Agreement]

MIRAMONTE COMPANIES, LLC, a Montana limited liability company

By:_____
Name: Christopher Kemmerly
Title: Manager

[Signature Page to Development Agreement]

EXHIBIT A

MIDTOWN COMMONS MASTER PLAN

Midtown Commons Master Plan

EXHIBIT B

LAND DESCRIPTION

Midtown Commons Property:

Lots 23 through 31, Block Q, of Carline Addition #3, a platted subdivision in Missoula, Montana, according to the official recorded plat thereof and recorded at Book 2 Plats, Page 24 in the records of Missoula County, Montana.

Lots 13 through 33, Block R, of Carline Addition #3, a platted subdivision in Missoula, Montana, according to the official recorded plat thereof and recorded at Book 2 Plats, Page 24 in the records of Missoula County, Montana.

Lots 11-19, Block 59, of Carline Addition, a platted subdivision in Missoula, Montana, according to the official recorded plat thereof.

Lots 1-4, Block 58, of Carline Addition, a platted subdivision in Missoula, Montana, according to the official recorded plat thereof.

Lots 20 and west half of Lot 21, Block 59, of Carline Addition, a platted subdivision in Missoula, Montana, according to the official recorded plat thereof.

Lots 23-24, Block 59, of Carline Addition, a platted subdivision in Missoula, Montana, according to the official recorded plat thereof.

Lots 25-28, Block 59, of Carline Addition, a platted subdivision in Missoula, Montana, according to the official recorded plat thereof.

Tollefson Property Purchase:

Lot 4-C1-A of certificate of survey No. 6541, located in the northwest quarter of Section 32, Township 13 North, Range 19 West, principal meridian, Montana, Missoula County, Montana.

EXHIBIT C

PARK MASTER PLAN

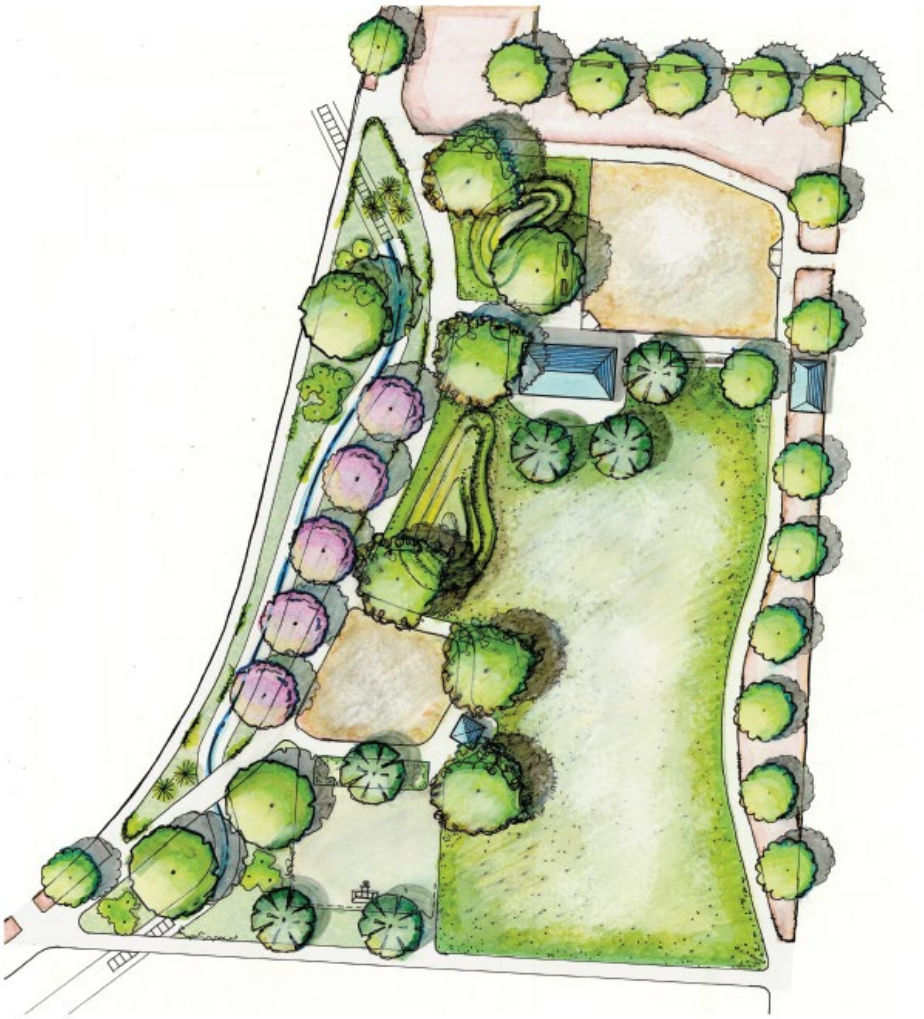
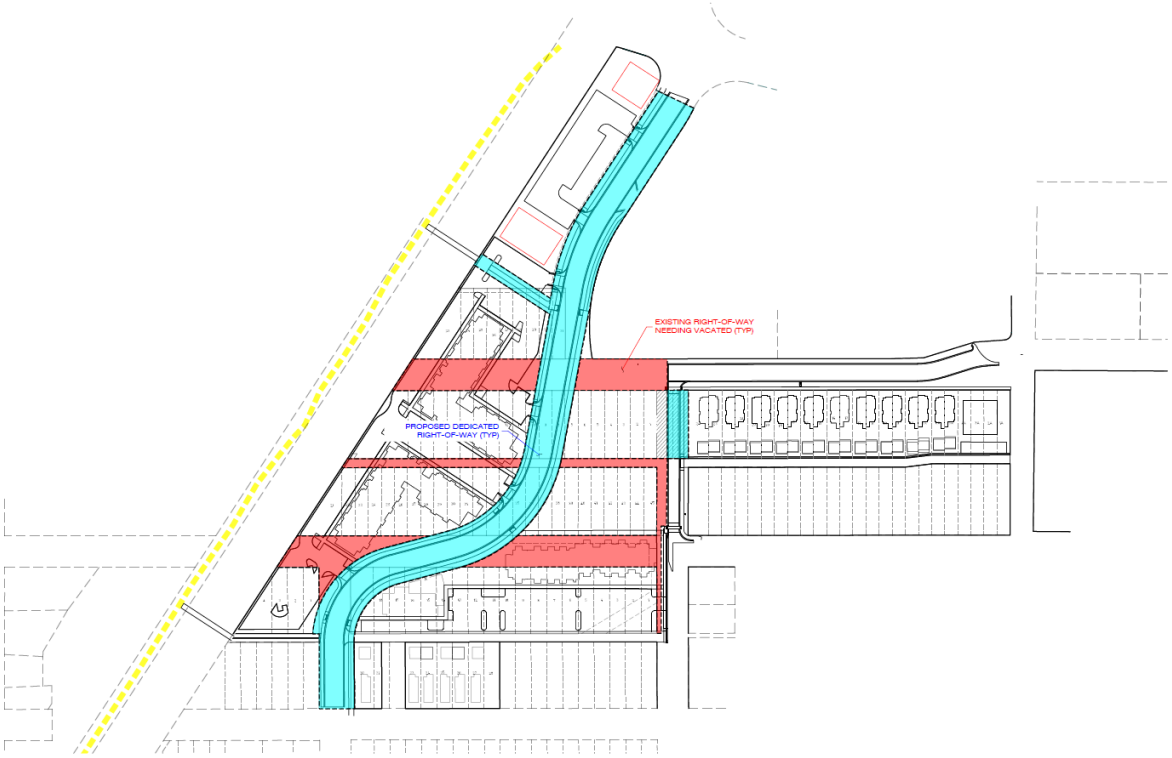
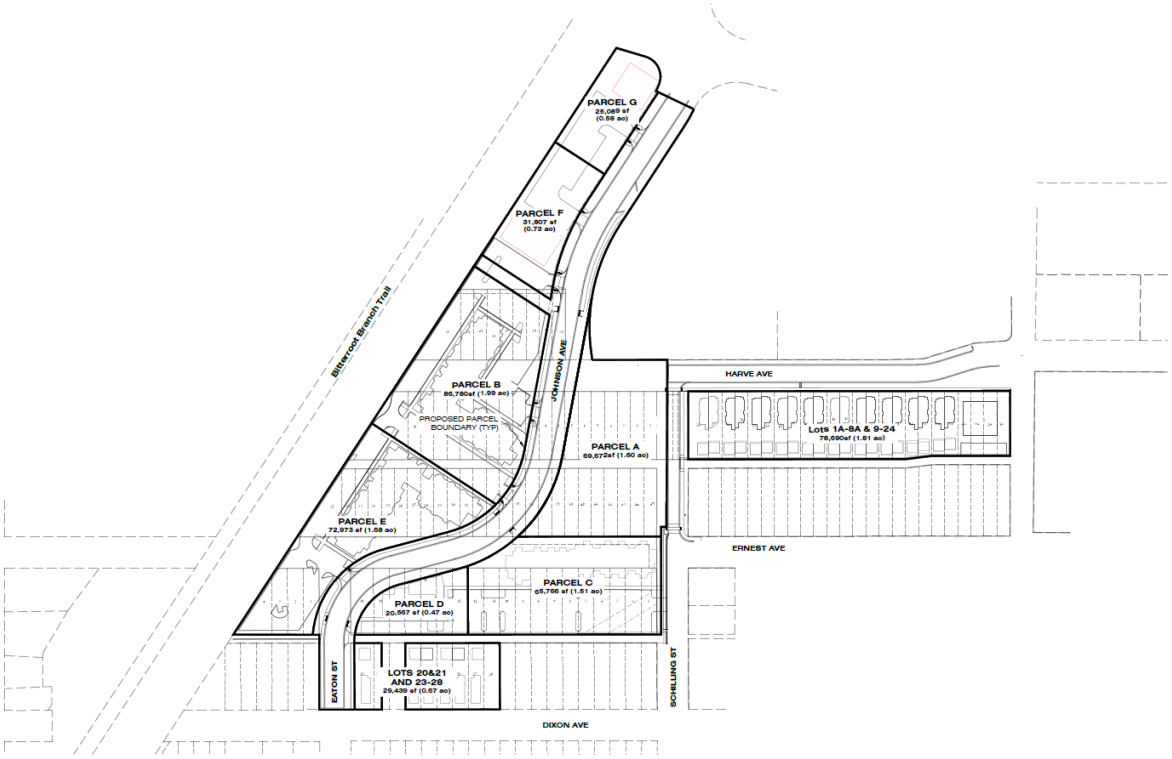


EXHIBIT D

RIGHT-OF-WAY TO BE VACATED/DEDICATED AND PROPOSED PARCEL MAP



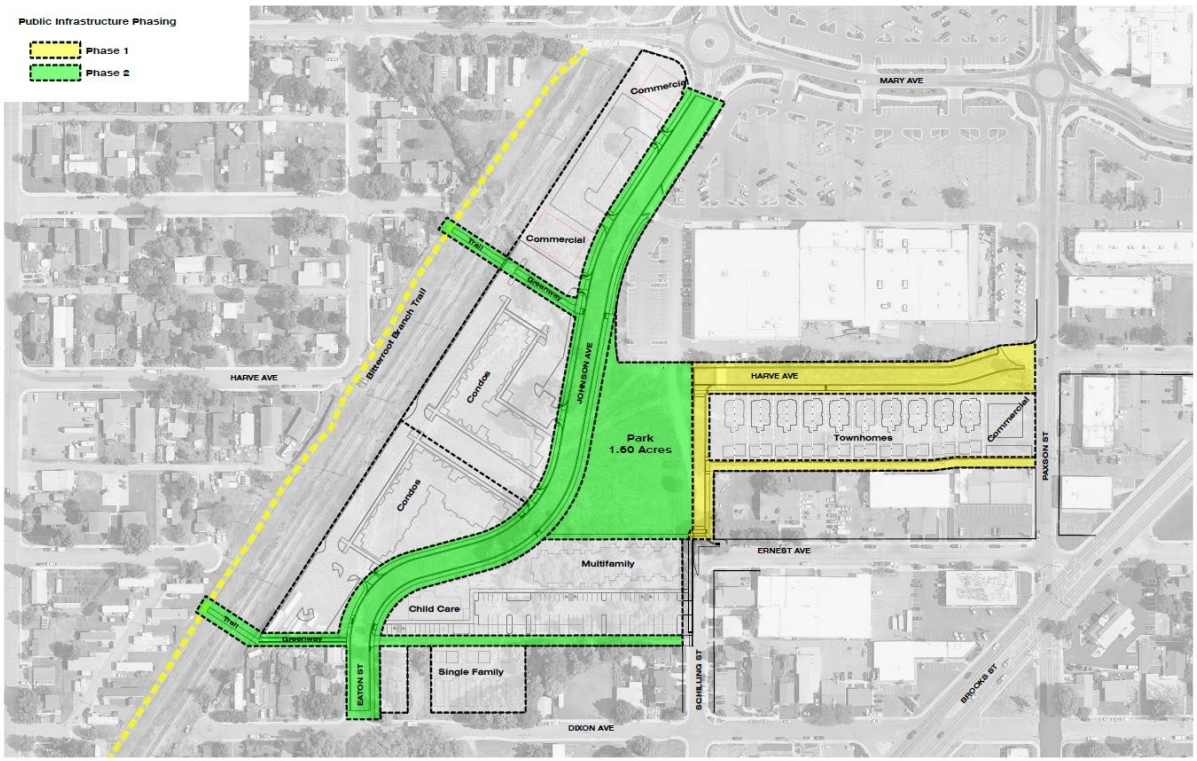
Midtown Commons Right-of-way Vacation/Dedication



Midtown Commons Proposed Parcel Map

EXHIBIT E

PUBLIC INFRASTRUCTURE PHASING PLAN



Midtown Commons Public Infastrucure Phasing Plan

EXHIBIT F

CITY'S NON-DISCRIMINATION AND EQUAL OPPORTUNITY POLICIES

NON-DISCRIMINATION. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, or gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

EQUAL OPPORTUNITY POLICY. Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Equal Opportunity Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Equal Opportunity Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an Equal Opportunity Plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, marital status or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, or gender identity or expression. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.